

This letter SUPERSEDES the *Klein* Advice Letter, No. A-12-046, to the extent that it is inconsistent with the assistance provided herein.

June 7, 2012

Marti Klein
James Klein Creative
2222 Martin Street, Suite 214
Irvine, CA 92677

Re: Your Request for Advice
Our File No. A-12-046a

Dear Ms. Klein:

This letter responds to your request for advice regarding the conflict-of-interest and post-governmental provisions of the Political Reform Act (the “Act”).¹ This letter serves to clarify advice provided to you in the *Klein* Advice Letter, No. A-12-046 (copy enclosed) and supersedes our prior letter to the extent that it is inconsistent with the advice provided herein.

We base this letter on the facts presented. The Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Also, there are other bodies of law, separate and apart from the Act’s conflict-of-interest provisions, that may apply to your situation. We urge you to check with the Attorney General’s office to determine whether any other laws are applicable in light of the facts you present.

QUESTIONS

1. Does the Act prohibit you from working simultaneously for both the South Coast Air Quality Management District (“SCAQMD”) and the California Air Resources Board (“ARB”)?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

2. Does the Act prohibit you from (a) resigning from the SCAQMD to accept employment with the ARB, or (b) resigning from the SCAQMD and, only after resigning, accepting employment with the ARB?

CONCLUSIONS

1. No. The Act does not prohibit employment by two or more government agencies.
2. No. The Act's post-governmental employment prohibition known as the "one-year ban" does not apply to a person who is, at the time of an appearance before or communication with his or her former agency, a board member, officer or employee of another public agency.

FACTS

You currently serve on the Hearing Board of the SCAQMD as an administrative law adjudicator, a position you have held for approximately seventeen years. It is your understanding that you are employed as an independent contractor to avoid conflicts of interest arising from the fact that the SCAQMD is a party in the cases you hear.² The jurisdiction of the SCAQMD primarily involves stationary sources, although it regulates some transportation-related programs such as ridesharing, vehicle scrapping and conversion of commercial fleets to alternative-fuel vehicles.

In addition, you periodically serve as a trainer for the Advanced Hearing Board Workshops held by the ARB, for which you only receive expense reimbursement.

You are exploring the possibility of employment with the ARB. The position would be within the Fuels Program, dealing with mobile source regulations that are not within the jurisdiction of the SCAQMD. The position would include, but not necessarily be limited to, serving as an administrative law adjudicator and providing training regarding mobile source regulations. The types of regulations of the SCAQMD (stationary sources) do not overlap with regulations of the ARB (mobile sources.)

You intend to disqualify yourself from hearing any case in which you participated in your prior employment at the SCAQMD. You ask whether the Act prohibits you from working concurrently at the SCAQMD and the ARB, resigning from the SCAQMD to accept employment with the ARB, or resigning from the SCAQMD and, only after resigning, accepting employment with the ARB.

² Although you are not asking about potential conflicts of interest arising from your role as an independent contractor, we note that, under certain circumstances, a "consultant" (which includes independent contractors) is a public official who is subject to the same conflict-of-interest provisions as employees of the agency. (See Regulation 18701(a)(2).) However, in your case you do not have an economic interest that could give rise to a disqualifying conflict of interest because the salary you receive from the state is not considered "income" under the Act.

ANALYSIS

Question One - Employment by two government agencies

The Act does not prohibit simultaneous employment by two or more government agencies.

Question Two – Leaving the SCAQMD and taking a position with the ARB: Post-Governmental Employment Restrictions

One-year ban.

The “one-year ban” prohibits, among others, a former officer or employee of an air pollution control district or air quality management district from making, for compensation, any formal or informal appearance, or making any oral or written communication, before his or her former agency if the communication or appearance is made for the purpose of influencing regulatory action. (Section 87406.1). However, there is an exception where an individual “who is, at the time of the appearance or communication, a board member, officer or employee of another district or an employee or representative of a public agency.” (87406.1)(c).) Because the ARB is a public agency, the one-year ban does not apply.

Influencing prospective employment.

The ban on “influencing prospective employment” prohibits a public employee from making, participating in making or using his or her official position to influence a governmental decision directly relating to any person with whom he or she is negotiating or has an arrangement concerning prospective employment. (Section 87407, Regulation 18747.) However, the prohibition does not apply when the prospective employer is a state, local, or federal government agency. (Regulation 18747(d)(3).) The ARB is a state agency. Accordingly, you may participate in decisions at the SCQMD involving the ARB.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Valentina Joyce
Counsel, Legal Division

VJ:jgl